IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.3264 OF 2005

IN

SUIT NO.14 OF 1982

...

Sushilkumar R. Ruia
and ors. ...Plaintiffs

v/s.

Ramnarain Sons Pvt.Ltd. & Ors. ...Defendants

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Mr.S.C.Naidu i/b C.R.Naidu & Co. for the Plaintiffs.
Mr.P.K.Samdhani i/b P.K.Shroff & Co. for Defendants Nos. 1, 3, 6, 8 & 14.

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CORAM: D.K.DESHMUKH, J.

DATED: 11TH JUNE, 2007

P.C.:

1. This Notice of Motion is taken out by the Plaintiffs for restoration of the suit, which was dismissed for non-prosecution on 4-12-2001.

2. Notice of Motion is liable to be dismissed for several reasons; (i) accepting averments made in the affidavit filed in support of the Notice of Motion at their face value, though the suit was dismissed on 4-12-2001 according to the Plaintiffs they became aware of the dismissal in the month of August, 2005. They received certified copy on 13th September, 2005. Present Notice of Motion has been lodged on 24-10-2005. Not even a prayer is made for condonation of delay in taking out the application for restoration within the period of limitation which starts running from the date of dismissal of the suit. Even assuming that the period of limitation starts from the date of knowledge, still the application is not filed within the period of limitation. Obviously in the absence of a prayer for condonation of delay motion cannot be granted.

(ii) All the defendants admittedly are related to the Plaintiffs. Therefore, the fact of death of the Defendants was obviously known to the Plaintiffs when the death occurred. The Defendants in their reply which is filed in June, 2006 have disclosed that the Defendants Nos. 1, 4, 5, 7, 11 & 13 have died. But no steps have been taken to bring on record the legal representatives of the deceased Defendants. In the absence of legal representatives of the deceased Defendants being brought on record, obviously the motion cannot be granted.

(iii) A grave and serious allegation is made against the advocate Mr.Arun Jeswanthlal that though the Plaintiffs were in correspondence with that advocate after dismissal of the suit that advocate concealed that fact from the Plaintiffs. According to the Plaintiffs, they came to know about the dismissal of the suit in August, 2005. No attempt has been made to contact that advocate to seek explanation from him either why he concealed the fact or why he did not appear before the court. Neither that advocate has been joined as a party to the motion nor a copy of this motion is served on him. In the absence of that

lawyer, on the basis of the affidavit which makes a grave and serious allegation against the lawyer, motion cannot be granted.

(iv) It is claimed that the firm of the advocate engaged by the Plaintiffs is dissolved. No document in support of that claim is produced. It is claimed that the Plaintiffs were in correspondence with the lawyer. Not a single letter to that effect is produced.

3. Taking overall view of the matter, therefore, Notice of Motion is disposed of.

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